

**In the District Court of the United States
for the District of Columbia**

EQUITY No. 56787

UNITED STATES OF AMERICA

v.

RIGEL O. BELT, ET AL.

STATEMENT AS TO JURISDICTION

In compliance with Rule 12 of the Supreme Court of the United States, as amended, the United States of America submits herewith its statement particularly disclosing the basis upon which the Supreme Court has jurisdiction on appeal to review the judgment of the district court entered in this case on November 3, 1942. A petition for appeal was filed January, 1943, and is presented to the district court herewith, January, 1943.

JURISDICTION

The jurisdiction of the Supreme Court to review by direct appeal the judgment entered herein is conferred by section 5 of the Act of April 27, 1912, 37 Stat. 93, 94, which provides:

That from the final decree of the Supreme Court of the District of Columbia,

(1)

and every part thereof, in the premises, an appeal shall be allowed to the United States, and to any other party in the cause complaining of such decree, to the Supreme Court of the United States, which last-mentioned court shall have full power and jurisdiction to hear, try, and determine the said matter, and every part thereof, and to make final decree in the premises; and the said cause shall, on motion of the Attorney General of the United States, be advanced to the earliest practicable hearing.

The case believed to sustain the jurisdiction of the Supreme Court is *Morris v. United States*, 174 U. S. 196, which involved the Act of August 5, 1886, 24 Stat. 335, containing a similar jurisdictional provision (sec. 5).

STATEMENT OF THE CASE

Section 1 of the Act of April 27, 1912, 37 Stat. 93, made it the duty of the Attorney General to institute suits against all parties claiming to own or to have an interest in land or water in the District of Columbia in, under, and adjacent to the Anacostia River, for the purpose of establishing and making clear the title of the United States thereto. Pursuant to this provision and on February 9, 1934, the Attorney General brought this suit to quiet the title of the United States to certain land along that river.

The land involved, known as Square 666 in the District of Columbia, is situated along the east-

erly line of Water Street between the southerly line of T Street SW., and the northerly line of U Street SW., and extends easterly between projections of the latter two lines to the channel of the Anacostia River.¹

In *Morris v. United States*, 174 U. S. 196, it was held that upon the cession from Maryland of land for the District of Columbia the United States became the owner of the bed of the Potomac River within the limits of the territory ceded. It was further held that, because the founders of the City of Washington intended to locate it upon the bank of the Potomac River and to bound it by a street or level, to be known as Water Street, so as to secure to the inhabitants and those engaged in commerce free access to the navigable water, and because the transactions between the original proprietors of lands in the City of Washington and the Commissioners of the City vested in the United States title to Water Street and the land lying between it and the river, the United States was the riparian owner along the river, and the holders of lots and squares abutting on Water Street had no riparian rights, nor any rights of private property in the lands or waters lying between Water Street and the channels of the Potomac River.

Based upon that case the bill of complaint herein alleged that the United States owned the

¹ See map, 174 U. S. p. 221.

bed of the Anacostia River and the land comprising Square 666 which lay between Water Street and the channel of the river. It further alleged that, except for small fringes of land, Square 666 had originally been laid out entirely below the mean high water line of the river. It also alleged that the defendants claimed to own or have some interest in that square based upon acts of the original commissioners of the City of Washington but that those officials had never granted more than a mere revocable water or wharfing privilege therein which was subject to the dominant title of the United States. The bill prayed a decree quieting the title of the United States.

The answer of defendant Rigel O. Belt, who claimed to be sole owner of Square 666 by virtue of a deed from one Groen, who had acquired a title based on adverse possession and deeds from others who had tax or other alleged titles, denied that the United States became the owner of the bed of the Anacostia River upon the cession from Maryland or became the owner of Water Street and the land between it and the river upon the establishment and laying out of the City of Washington. It further denied that Square 666 had been laid out wholly in the waters of the river, alleging that a substantial part of the square was always fast land. The answer also alleged that the lands comprising Square 666

had once been a portion of lots laid out in the Town of Carrollsburgh and extending to the channel of the Anacostia River; that these Carrollsburgh lots had been deeded in trust for the founding of the City of Washington and upon condition that one-half the quantity of the lots should be reconveyed to the grantors as near the old situation as may be; that pursuant to the deeds of trust the commissioners of the City of Washington had assigned or sold in fee to the original Carrollsburgh proprietors and others lots in Square 666 "in part" for Carrollsburgh lots and lots in Square 666 corresponding to the lots in Square 665 to "complete the compensation" for the Carrollsburgh lots; and that thereby the fee title of Square 666 had vested in the predecessors of the defendant. The answer prayed dismissal of the complaint.

The Government placed in evidence the Ellicott Engraved Plan of the City of Washington (1792)² showing on the Anacostia River a continuous open space between the line of the lots and squares and the river. It introduced a tracing of the area involved depicting the original and the present mean high water lines of the river, the bulkhead line established by the War Department, and the deep water line of the channel of the river; and portions

² See 174 U. S. p. 220.

of maps and plats³ showing that in the beginning Square 666 was laid out in the waters of the river. It adduced photostats of the Division Sheets and the Register of Squares, pertaining to Square 666, corroborating the maps and plats. The Government also introduced entries from volumes of the Division of Squares, relating to Square 666, showing that the area in question was "laid off in water lotts to be attached to the lotts on the east side of Square 665" and was assigned as "water privilege"; and the Wharfing Regulations adopted by the Commissioners July 20, 1795, asserting public control over the river front.

The defendant relied upon the testimony of a geologist and certain ancient residents to show that from the beginning there had been a strip of upland between the easterly line of Water Street and the river. He also relied upon the provisions of the Carrollsburgh deeds in trust and the assignments in fee of lots in Square 666 to show that he had acquired rights of private property in lands and waters intervening Water Street and the channel of the river.

The district court filed a memorandum opinion, a copy of which is appended, holding for the de-

³ Including the following: the Dermott Map (reproduced in part at 174 U. S. p. 221); Plate X of the King Plats (1803); King Map (1813); Stone Map (1852); Sheet X of the Bastert and Enthoffer Map (1872); and Coast and Geodetic Survey Map 391-A (1882).

fendant. Findings of fact, conclusions of law, and judgment in accordance with this holding were entered. The United States assigns error to the findings, conclusions, and judgment.

✓ CHARLES FAHY,
Charles Fahy,
Solicitor General.

✓ ALEX. H. BELL, JR.,
Alexander H. Bell, Jr.,
Attorney for the United States.

JANUARY 1943.

**In the District Court of the United States
for the District of Columbia**

EQUITY No. 56787

UNITED STATES OF AMERICA, PLAINTIFF

vs.

RIGEL O. BELT ET AL., DEFENDANTS

MEMORANDUM

Suit by the United States as plaintiff brought pursuant to Act of Congress of April 27, 1912 (37 Stat. 93), to establish and make clear the title of the United States in parcels of land in the District of Columbia adjacent to the Anacostia River or Eastern Branch of the Potomac River. The area involved is known as Square 666 in the City of Washington, District of Columbia.

The claim of the United States is that title to the land in Square 666, while purporting to have been conveyed, at or about the years 1793 and 1794, to the predecessors in interest of the defendants by Commissioners of the United States appointed to lay out the City of Washington, did not vest in the grantees, for the reason that the land was below the high water line of the Ana-

costia River, a navigable stream, and therefore was property of which only the Congress of the United States might lawfully dispose.

Upon consideration of the evidence adduced in support of the respective claims with regard to the question of fact as to whether the property in question was below the high water mark of the River at the time of the conveyances, I find there is much doubt as to which claim is correct. However, there are considerations which lead me to the view that the contentions of defendants must be sustained. Approximately one hundred forty years have elapsed without calling into question the legality of the conveyances or the validity of the titles to the land in question. In the meantime, taxes have been paid on the property, in some instances improvements have been made, and in some cases loans have been made in reliance upon the validity of the titles. Under these circumstances, the burden is on the Government, which now seeks to attack title to the property, to establish its position by clear and convincing evidence.

Maxwell Land and Grant case, 121 U. S. 325.

United States v. Budd, 144 U. S. 154, 12 S. C. 575.

United States v. Stinson, 197 U. S. 200, 25 S. C. 426.

Moreover, such a burden must be imposed on the Government for the reason that the Court will pre-

sume the Commissioners of the United States acted lawfully in making the conveyances. *State v. Dugan*, 110 Mo. 138. See also

Butler v. Maples, 9 Wall. 766.
Minter v. Crommelin, 18 How. 87.
Phillips v. Ballinger, 37 App. D. C. 46.
Korbl v. Springfield Savings Institute, 245 U. S. 330.
Washington Terminal Co. v. D. C., 36 App. D. C. 186.

Because of the burden thus imposed upon the Government I have concluded it has failed to establish as a fact that the land here in dispute, when conveyed to defendants' predecessors in interest, was below the high water mark of the Anacostia River or Eastern Branch of the Potomac.

Consideration of the decision of the Supreme Court of the United States in *Morris v. U. S.* 174, U. S. 196, relied upon by the Government to support its claim, convinces me that it does not control the factual findings in the case at bar. In the Morris case, the Court dealt with the Potomac River and the land adjoining it. In the present case, the Eastern Branch of the Potomac and the land adjacent is in litigation. Specific evidence as to the character of the soil along the Eastern Branch was introduced before me which was not in any manner brought before the Supreme Court in the Morris case. This evidence, of a geologist and of other eyewitnesses as to the character

of the soil, indicated fast land as of the time of the conveyances to defendants' predecessor in interest. This evidence, highly persuasive, was not contradicted by the same character of convincing evidence, although evidence on the point must have been available to the Government. Therefore, while some language of the Morris case, obviously *obiter dictum*, supports the Government's claim, yet under the circumstances it should not control the findings of fact in this case.

I have further concluded that granting, *arguendo*, plaintiff's position in the case at bar should be found to be correct in point of fact, nevertheless the Government is not in a position to urge this point before this court of equity without at least an offer to award to the defendants compensation equal to the value of the land. All of the conveyances by which the Commissioners of the United States obtained title for the United States to the property in this case contained provisions as follows:

To have and to hold the hereby bargained and sold lots, pieces, and parcels of ground with their appurtenances, * * * To and for the special trusts following and no other, say, that all the said lots, pieces, and parcels of ground hereby bargained and sold, be laid out together with the other lands and designated for that purpose, for a Federal City, with such streets, squares,

parcels, and lots as the President of the United States, for the time being, hath approved or shall approve; and that the said Thomas Beall (Son of George) and John Mackall Gantt, or the survivor of them, or the heirs of such survivor, shall convey to the Commissioners, for the time being, appointed by virtue of the Act of Congress, intitled, "An Act for Establishing the Temporary and Permanent Seat of the Government of the United States", and their successors for the use of the United States, forever, all the said Streets, and such of the said squares, parcels and lots, as the President shall deem proper, for the use of the United States. And that one-half the quantity of the said lots, pieces and parcels, hereby bargained, and sold, shall be assigned and conveyed as near the old situations, as may be to him the said Charles Carroll of Carrollton, his heirs, and assigns, in fee simple, so that he shall have made up to him one-half of his former quantity and in as good a situation; but if from appropriations for the use of the United States one half the quantity cannot be assigned to him in like situation, then shall there be satisfaction made him in ground, within the Federal City, by consent and agreement between him and the Commissioners; but if they should disagree, then shall the same proprietor receive a just and full compensation in money, in lieu of land. And that such parts of the said lots, which shall remain clear of appropriations for the use of

the United States, and which shall remain after satisfaction in land, to the now proprietors, shall, and may be sold at such time, or times, in such manner, and on such terms and conditions, as the President of the United States, for the time being shall direct; and that the said Thomas Beall (Son of George) and John Mackall Gantt, or the survivor of them, or the heirs of such survivor, will, on the order or directions of the President, convey the same to the respective purchasers, in fee simple, according to such direction, and the terms and conditions of such purchases; and the proceeds of the sales shall as far as necessary, be in the first place applied to make good the payment in money (where compensation is to be made in money) and what thereof may remain in money or securities of any kind, shall be paid, assigned, transferred, and delivered over to the President, for the time being, as a grant of money, and to be applied for the purposes, and according to the Act of Congress aforesaid. But the said conveyances to the purchasers shall be on and subject to such terms and conditions as shall be thought reasonable by the President, for the time being for regulating the materials and manner of the buildings and improvements on the lots, generally in the said City, or in particular streets, or parts thereof, for common convenience, safety and order; Provided such terms and conditions, be declared before the sale of any of the said lots, under

the direction of the President." (Defendants' Exhibit 1-Murray, Examiner.)

These conveyances imposed a legal duty on the Government to make return to the grantors either in the form of property or in the form of payment of compensation. Pursuant to this obligation, the Commissioners purported to convey property now claimed to have been beyond their power to convey. If title in the Government now is cleared, is not the Government in good conscience required to make compensation as required by the instruments through which its claim arises? It cannot be questioned that the Government, when applying for relief in a court of equity, is as much bound to do equity as a private litigant.

Brent v. Bank of Washington, 10 Peters 596 (614), 9 L. Ed. 555.

McKnight v. United States, 98 U. S. 179, 25 L. Ed. 115.

United States v. Detroit T. & L. Co., 200 U. S. 321, 26 S. C. 282.

I find no provision similar to that quoted in the present case was included in any of the conveyances to the Commissioners of the United States by property owners in the Morris case, *supra*. Therefore, the right to compensation when urged in the Morris case might be said to be purely a moral right, of which a civil court cannot take notice, as distinguishable from a contractual or

property right, where courts of equity have jurisdiction.

It seems there can be no question as to the right of the Government to acquire from the defendants in this case title to the property, but in my opinion this can only be accomplished upon an award of just compensation.

Proposed Findings of Fact and Conclusions of Law have been submitted to me before reaching the conclusions here announced. They will be settled as of the time of submission of the proposed order of Court in conformity with the views I have expressed. At the same time, the question of any further proceedings to be taken in this cause may be discussed.

BOLITHA J. LAWS,
Justice.

OCTOBER 7, 1942

**In the District Court of the United States
for the District of Columbia**

EQUITY No. 56787

UNITED STATES OF AMERICA, PLAINTIFF

v.

RIGEL O. BELT, ET AL., DEFENDANTS

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court on the evidence and after consideration makes the following findings of fact and conclusions of law in the above case:

1. In March 1793 defendants' predecessors in title were the owners of certain lots in the town of Carrollsburg, bounded on the Eastern Branch or Anacostia River within the limits of the City of Washington, a part of which lots were included in Square numbered 666 by the Commissioners appointed for laying out the Federal City.

2. That the original proprietors of said lots had refused to convey the same to the trustees

appointed to receive deeds in trust of the lands embraced within the City of Washington when such deeds of trust were executed by original proprietors of lands within said limits in March 1791, but thereafter in March 1793 did execute deeds in trust to said trustees containing the following provision in lieu of that appearing in the conveyances theretofore executed:

To have and hold the hereby bargained and sold lots, pieces, and parcels of ground with their appurtenances, * * * To and for the special trusts following and no other, say, that all the said lots, pieces, and parcels of ground hereby bargained and sold, be laid out together with the other lands and designated for that purpose, for a Federal City, with such streets, squares, parcels, and lots as the President of the United States, for the time being, hath approved or shall approve; and that the said Thomas Beall (Son of George) and John Mackall Gantt, or the survivor of them, or the heirs of such survivor, shall convey to the Commissioners, for the time being, appointed by virtue of the Act of Congress, entitled, "An Act for Establishing the Temporary and Permanent Seat of the Government of the United States", and their successors for the use of the United States, forever, all the said Streets, and such of the said squares, parcels and lots, as the President shall deem proper, for the use of the United States. And

that one-half the quantity of the said lots, pieces and parcels, hereby bargained, and sold, shall be assigned and conveyed as near the old situations, as may be to him the said Charles Carroll of Carrollton, his heirs, and assigns, in fee simple, so that he shall have made up to him one-half of his former quantity and in as good a situation; but if from appropriations for the use of the United States one-half the quantity cannot be assigned to him in like situation; then shall there be satisfaction made him in ground, within the Federal City, by consent and agreement between him and the Commissioners; but if they should disagree, then shall the same proprietor receive a just and full compensation in money, in lieu of land. And that such parts of the said lots, pieces, and parcels hereby bargained and sold, which shall remain clear of appropriations for the use of the United States, and which shall remain after satisfaction in land, to the now proprietors, shall, and may be sold at such time, or times, in such manner, and on such terms and conditions, as the President of the United States, for the time being shall direct; and that the said Thomas Beall (Son of George) and John Mackall Gantt, or the survivor of them, or the heirs of such survivor, will, on the order or directions of the President, convey the same to the respective purchasers, in fee simple, according to such direction, and

the terms and conditions of such purchases; and the proceeds of the sales shall as far as necessary, be in the first place applied to make good the payment in money (where compensation is to be made in money) and what thereof may remain in money or securities of any kind, shall be paid, assigned, transferred, and delivered over to the President, for the time being, as a grant of money, and to be applied for the purposes, and according to the Act of Congress aforesaid. But the said conveyances to the purchasers shall be on and subject to such terms and conditions as shall be thought reasonable by the President, for the time being for regulating the materials and manner of the buildings and improvements on the lots, generally in the said City, or in particular streets, or parts thereof, for common convenience, safety and order; Provided such terms and conditions, be declared before the sale of any of the said lots, under the direction of the President."

3. That in part consideration thereof said Commissioners, pursuant to the provisions of said deeds in trust, allotted and conveyed to defendants' predecessors in title all of the lots in Square 666 except lots 2, 6, 7, 8 and 10 in said Square, which last enumerated lots were on September 16, 1793 ordered by the President of the United States to be sold by the Commissioners, and were thereafter sold by said Commissioners and deeds

conveying the same executed and delivered to purchasers, whose title so obtained has also devolved upon the defendants.

4. The Court finds that at the time of the laying out of said Square 666 by the Commissioners, the division of the same, and the conveyances of the lots therein to defendants' predecessors in title, said Square consisted of fast land bounded by Water Street on the west and the waters of said Eastern Branch or Anacostia River on the east.

5. That it was the intention of the United States Commissioners, upon the division and assignment of the several lots in Square 666, to grant to the owners of the lots in Carrollsburgh for which the lots in Square 666 were substituted in exchange an estate in fee simple, and not, as plaintiff contends, their intention to grant merely a revocable water privilege or license to wharf out to the channel in connection with the same proprietors' ownership of the lots in Square 665.

6. The Court further finds that in the laying out of that part of the City of Washington which is bounded by the Eastern Branch, the dividing of the same into squares and lots and in making division of such lots adjacent to the said Eastern Branch with the original proprietors, and in the sale of the public lots remaining after such division, a general plan of bounding the city on that front by a street separating privately owned

property from the waters of the Eastern Branch was not adopted or followed.

Upon said findings of fact the Court makes the following conclusions of law:

CONCLUSIONS OF LAW

1. That the defendant, Rigel O. Belt, is the present owner in fee simple of all of the Square 666 subject only to the liens of the several deeds of trust described in the complaint.
2. That the certificates issued and conveyances made by the Commissioners for laying out the Federal City, under the direction of the President, vested in the original proprietors of the said lots in Square 666 other than lots 2, 6, 7, 8, and 10, and the subsequent sales of the last mentioned lots vested in the purchasers at said sales the fee simple titles to the respective lots including riparian rights in waters of the Eastern Branch.
3. That the United States, plaintiff herein, has no right, title, or interest in any of the lands included in Square 666.
4. In view of the findings of fact and conclusions of law as set forth herein the plaintiff's bill of complaint should be dismissed with prejudice.

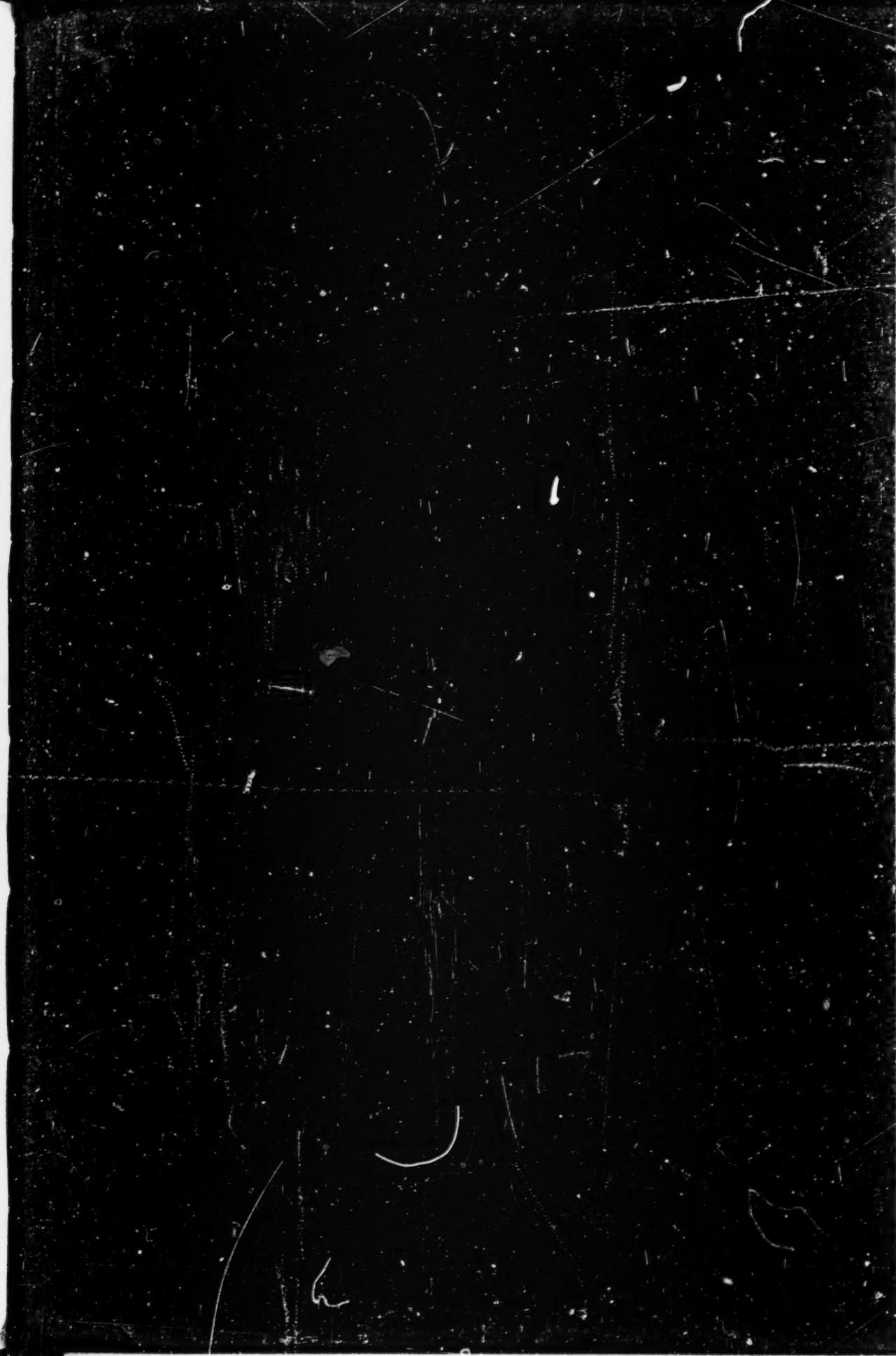
BOLITHA J. LAWS,
Justice.

NOVEMBER 3, 1942.

OPPOSITION

BRIEF

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In the District Court of the United States
for the District of Columbia

EQUITY No. 56787

UNITED STATES OF AMERICA, PLAINTIFF AND
APPELLANT

v.

RIGEL O. BELT ET AL., DEFENDANTS

ON MOTION TO DISMISS APPEAL

BRIEF FOR THE UNITED STATES IN OPPOSITION

The motion to dismiss the appeal is based on section 238 of the Judicial Code, as amended February 13, 1925 (sec. 1, 43 Stat. 938, 28 U. S. C. sec. 345), abolishing direct appeals to the Supreme Court of the United States from judgments of the district courts except in certain specified instances. This section, however, operates only in that field where the district courts have been given jurisdiction of a general, fixed, and permanent character, such as, for example, jurisdiction of suits involving the constitutionality of federal statutes or the validity and construction of treaties. H. Rept. No. 1075, 68th Cong., 2d sess.

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(1925), pp. 4-5. It does not affect special cases where Congress has shown a purposeful intent to give the Supreme Court a special and obligatory jurisdiction. See *Baltimore Nat. Bk. v. Tax Comm.*, 297 U. S. 209, 215; *Hepner v. United States*, 195 U. S. 100, 125; *Washington v. Miller*, 235 U. S. 422, 428. Cf. *Baltimore & Ohio R. R. Co. v. United States*, 279 U. S. 781.

The Jurisdictional Act of April 27, 1912, 37 Stat. 93, authorizing the present appeal, is such a special case, as its history plainly shows. The 1912 Act may be traced back to 1882. In that year Congress appropriated money for the reclamation of the Potomac Flats and authorized the Attorney General to take any necessary steps to establish the title of the United States thereto. It was thought at the time that the only claim to the flats adverse to the United States was one made to a very small portion thereof under the Kidwell patent. By 1886, however, after great expenditures had been made in the work of reclaiming the flats, it had become clear that numerous parties claimed riparian rights in the flats. Congress sensed the immense importance of providing adequate measures which would safeguard not only the Government's title to the flats but also its considerable investment therein. Upon advice that a special tribunal should be specially charged with the important duty of "protecting the interests of the United

States in the Potomac Flats" (17 Cong. Rec., pp. 3403-3412), Congress enacted the Act of August 5, 1886, 24 Stat. 335. That Act (1) made it the duty of the Attorney General to bring a suit in the Supreme Court of the District of Columbia "for the purpose of establishing and making clear the title of the United States" to the Potomac Flats; (2) conferred on that court full jurisdiction over the litigation; (3) provided for an appeal to the Supreme Court of the United States; and (4) vested the latter court with "full power and jurisdiction to hear, try, and determine the said matter."

The Attorney General shortly thereafter instituted the suit authorized by the 1886 Act, which was decided in favor of the Government by both the Supreme Court of the District of Columbia and the Supreme Court of the United States, the latter court exercising jurisdiction on direct appeal pursuant to the mandate of the statute. *Morris v. United States*, 174 U. S. 196 (1889). The Court rejected the claim based on the Kidwell patent, holding after a thorough review of the evidence that the founders of the City of Washington had intended to maintain public ownership over the river-front property in the City.

Following the *Morris* decision Congress made its first appropriations for the reclamation of the Anacostia flats and the improvement of the Anacostia River. Claims to interests in the

lands along and under that river soon developed. These claims impeded the orderly progress of the work of reclamation and improvement, and the need for an investigation of them became evident. In 1909 Congress provided for the employment of special counsel "to investigate and determine the ownership of the land and riparian rights along the Anacostia River." Mr. Hugh T. Taggart was appointed as such special counsel, and he subsequently made a report to Congress.

His report stated that title to the property underlying the intended Water Street along the Anacostia River and between that street and the river, lay in the United States and the private claims to that property were unfounded. S. Doc. No. 462, 61st Cong., 2d sess. (1910); S. Doc. No. 19, 62d Cong., 1st sess. (1911).

Upon considering this report and requests made by the Attorney General and the Chairman of the Board of Engineers in charge of the reclamation project for legislation which would facilitate the determination of claims impeding immediate progress of the work of reclamation and of claims which might arise and might hinder the future progress of the work, Congress enacted the Act of April 27, 1912, 37 Stat. 93. This Act was modelled upon the 1886 Act and contains substantially the same terms and provisions, including the provision that the Supreme Court shall "hear, try, and determine the said matter." Like the earlier act, it was enacted to

meet a particular situation by providing for the special treatment and disposition of claims threatening important interests of the United States. The acts are further alike in that both reflect a purposeful congressional will that certain claims affecting vital concerns of the Government should be thoroughly examined and passed upon by both the Supreme Court (now the district court) of the District of Columbia and the Supreme Court of the United States. It is significant that, notwithstanding that in the meantime a Court of Appeals for the District of Columbia had been established (Act of February 9, 1893; 27 Stat. 434) Congress provided for direct appeal to the Supreme Court of the United States, thus intentionally by-passing the Court of Appeals. The 1912 Act differs from the 1886 Act only in that, responsive to the requests of the Attorney General and the Chairman of the Board of Engineers, it provides for more than one lawsuit, thus insuring the disposition of claims as they might arise and hinder the future progress of improvements along the Anacostia River.

The legislative machinery thus provided has been resorted to beginning in 1913 in a number of cases, of which a report was made to Congress. S. Doc. No. 1137, 62d Cong., 3d sess. (1913). The earlier cases have been settled favorably to the United States and consistently with the plans of the National Park and Planning Commission for the development of the Anacostia water front. The

present suit was one begun in 1933 after the National Park and Planning Commission had advised the Attorney General that it desired to have title to the property cleared up so that it might proceed with filling operations between Water Street and the established bulkhead line in the river should it determine to do so.

It is evident, therefore, that by the 1912 Act Congress, attaching particular importance to protecting the interests of the United States in the Anacostia water front, made a special provision allowing appeal to the Supreme Court of the United States, which section 238 of the Judicial Code, as amended, a statute pertaining to appeals from judgments of the district courts entered in the exercise of their ordinary and usual jurisdiction, left untouched. No absolute policy against direct appeals from the district courts to the Supreme Court of the United States exists. Section 238 itself did not abolish all such appeals. And from time to time Congress has allowed direct appeals in special instances. E. G., Act of July 27, 1917, 40 Stat. 247, 248; Act of May 22, 1936, 49 Stat. 1369 (*United States v. Northern Pacific Ry.*, 311 U. S. 317). The 1912 Act represents one other such special instance.

However, should the Court, notwithstanding these considerations, be of the opinion that the Act of February 13, 1925, impliedly repealed the provision for appeal in the Act of April 27, 1912, we respectfully suggest that the circumstances here

are of the same extraordinary character as those in *Phillips, Governor of Oklahoma, v. United States*, 312 U. S. 246, 254, and justify saving appellant's right to appeal to the proper court in the manner in which this was done in that case.

Appellees also base their motion to dismiss on the contention that the judgment below is supported by the evidence. This contention raises the merits of the appeal. We submit that the presence of a substantial question is shown by the fact that the lower court held adversely to the government's contentions notwithstanding that the government introduced the same evidence as that on which it had prevailed in *Morris v. United States*, 174 U. S. 196.

It is accordingly submitted that the motion to dismiss the appeal should be denied.

Respectfully,

CHARLES FAHY,

Charles Fahy,

Solicitor General.

ALEX. H. BELL,

Alexander H. Bell,

Attorneys for the United States.

OPPOSITION

BRIEF

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U.S. GOVERNMENT PRINTING OFFICE 1943
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APR 14 1943

SUPREME COURT OF THE UNITED STATES CLERK

OCTOBER TERM, 1942

No. 919

THE UNITED STATES OF AMERICA,
Appellant,
vs.

RIGEL O. BELT, CLINTON ROBB, TRUSTEE, ARTHUR
B. CAMPBELL, TRUSTEE, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE DISTRICT OF COLUMBIA.

**STATEMENT OPPOSING JURISDICTION AND
MOTION TO DISMISS.**

✓
✓ MILTON D. CAMPBELL,
WALTER M. BASTIAN,
Counsel for Appellees.

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IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF COLUMBIA

Equity No. 56,787

THE UNITED STATES OF AMERICA,

vs.

RIGEL O. BELT, ET AL.

**APPELLEES' STATEMENT OF OBJECTIONS TO THE
JURISDICTION OF THE SUPREME COURT OF THE
UNITED STATES ON THE APPEAL.**

Upon the authority of Paragraph 3 of Rule 12 of the Supreme Court of the United States, the appellees submit herewith the following grounds of opposition to the jurisdiction of said court asserted by the appellant.

I.

Appellant relies upon the Act of Congress of April 27, 1912, Section 5 (37 Stat. 93, 94) as statutory authority for the direct appeal to this Court from the District Court of the United States for the District of Columbia. The precedent cited is the case of *Morris v. United States*, 174 U. S. 196, instituted under the authority of the Act of Congress of August 5, 1886 (24 Stat. 335).



Appellees' position is that the Act of Congress of February 13, 1925, Section 1 (43 Stat. 938; Judicial Code, Section 238, as amended; United States Code, Title 28, Section 345), repealed this jurisdictional provision of the Act of April 27, 1912, *supra*. The entire section as amended is as follows:

"Appellate jurisdiction from decrees of United States District Courts.

A direct review by the Supreme Court of an interlocutory or final judgment or decree of a district court may be had where it is so provided in the following sections or parts of sections, and not otherwise:

- (1) Section 29 of Title 15, and section 45 of Title 49.
- (2) Section 682 of Title 18, where the decision of the district court is adverse to the United States.
- (3) Section 380 of this title.
- (4) So much of sections 47 and 47a of this title as relate to the review of interlocutory and final judgments and decrees in suits to enforce, suspend, or set aside orders of the Interstate Commerce Commission other than for the payment of money.
- (5) Section 217 of Title 7."

It will be noted that the Act of April 27, 1912, *supra*, is not a special Act of Congress but a public act of general character restricted only as to the area which may be involved in actions brought by its authority. A number of suits have been filed under this Act of 1912. The pending suit was filed and during protracted sessions, testimony covering twenty typewritten volumes was taken and exhibits numbering more than three hundred were filed. This voluminous record was almost entirely devoted to questions of fact arising in the instant case and not common to other cases which have been filed or may be filed under the

Act of 1912, *supra*. In view of the absence of limitation in said Act of 1912, the present suit having been filed more than twenty years thereafter, a large number of cases involving different factual situations may arise as to which jurisdiction, if now sustained, will apply.

The cited provision of the Act of 1925, *supra*, repealing the jurisdiction of this Court over direct appeals from the District Courts of the United States except in the five excepted classes, was a part of legislation intended to curtail the vast amount of litigation reviewable by the United States Supreme Court as of right and which the growth of the nation had so increased that it imposed an inordinate burden upon the court.

In view of the plain intent of Congress to drastically relieve this situation, this legislation has received a strict interpretation.

The present case, and other cases pending or which may be brought under the Act of 1912, *supra*, which may be appealed by any party from the decision of the District Court, because of their factual complexity arising from the disputed questions involving the character of the squares at the time of their conveyance by the Commissioners on the part of the United States to private owners more than one hundred and forty years ago, come as markedly within the spirit and purpose of the Act of 1925, *supra*, as they clearly do within its letter.

In support of our statement we call attention to the eleven assignments of error filed with the petition for allowance of appeal, substantially all of which would require the court to determine disputed factual issues and to examine the testimony and exhibits in detail.

In view of the provision of Rule 12, Paragraph 2, requiring a copy of the assignments of error to be presented with the statement accompanying the petition for appeal,

we do not include a statement of errors claimed in this objection to the appeal.

II.

Should the court find that it has jurisdiction to entertain the appeal notwithstanding the Act of February 13, 1925, *supra*, we submit that the case is not one in which the appeal should be allowed.

The property in question consists of thirteen lots comprising all of Square 666 which, according to the original official description of the square at the time of the grant, was bounded on the west by Water Street and on the east by the waters of the Eastern Branch. One of the main factual issues was whether this land between Water Street and the Eastern Branch, a part of which is 15' above high water line, was fast land at the time of the grant. The District Court so held.

In the official surveys of the City of Washington and its division into squares by the Commissioners appointed by the President under the Act of Congress approved July 16, 1790, the greater part of the property abutting on the waters of the Anacostia River was not bounded by a "water" street. As to the greater part the squares were laid out conforming to the usual north, south, east and west plan and extending to the waters of the Eastern Branch in what may be termed fractional square units. Since 1793 these squares bounding on the Eastern Branch not acquired by the Government by condemnation proceedings or otherwise, have remained in private ownership, improved in many instances. Since the original grants they have been assessed for taxation by the municipal authorities of the District of Columbia, a quasi federal body, and the proceeds of the original sales made in accordance with the terms of the deeds in trust were paid into the federal treasury and used for the erection of public buildings in the federal city.

Counsel have relied upon a statement in the case of *Morris v. United States*, 174 U. S. 196, referring to the intention of the Commissioners to bound the City by a water street, as a basis for their claim of title in the United States. The question of title to property along the Eastern Branch was not before the Court in that case. The factual situation in the case of *Morris v. United States, supra*, was very different from that in the instant case.

Two forms of deeds in trust were used in conveying land to the trustees appointed by the President. One form was used to convey all lands of which the grantors were seized within the proposed Federal City except lots of which the grantors were seized or entitled in Carrollsburgh or Hamburgh.

The other form of trust was used to convey lots which the grantors were seized in Carrollsburgh and Hamburgh, *supra*.

Both of the said forms conveying the land described therein to the trustees contained substantially the following provision.

"that all the said lots, pieces and parcels be laid out together with the other lands and designated for that purpose, for a Federal City, with such streets, squares, parcels, and lots as the President of the United States, for the time being, hath approved or shall approve; and that the said Thomas Beall, (Son of George) and John McKall Gantt, or the survivor or the heirs of such survivor shall convey to the Commissioners for the time being, appointed by virtue of the Act of Congress, entitled, "An Act for establishing the temporary and permanent seat of the Government of the United States," and their successors for the use of the United States forever, all the said streets, and such of the said Squares, parcels and lots as the President of the United States shall deem proper for the use of the United States.

The deed in trust conveying land other than that in Carrollsburgh and Hamburgh, supra, contained the following provision relative to the division of the lots:

“And that as to the residue of the said lots into which the said lands hereby bargained and sold, shall have been laid off and divided, that a fair and equal division of them shall be made; and if no other mode of division shall be agreed on by consent of the said — (grantor) and the Commissioners for the time being, then such residue of the said lots shall be divided, every other lot alternate to the said — (grantor) and it shall, in that event be determined by lot whether the said — (the grantor) shall begin with the lot of the lowest number laid out on the said lands or the following number.”

The deed in trust from the owners of land in Carrollsburgh and Hamburgh, supra, contained the following provision:

“And that one half of the quantity of the said lots, pieces and parcels hereby bargained and sold shall be assigned and conveyed as near the old situation as may be to him the said Charles Carrcl his heirs and assigns, in fee simple, so that he shall have made up to him one half of his former quantity and in as good a situation; but if from appropriations for the use of the United States one half of the quantity cannot be assigned to him in like situation, then shall there be satisfaction made him in ground within the Federal City, by consent and agreement between him and the Commissioners; but if they should disagree, then shall the same proprietor receive a just and full compensation in money, in lieu of land”.

(Charles Carroll was one of the original proprietors who received title to a part of the lots in this suit in exchange for water front lots in Carrollsburg.)

In laying off the Federal City Water Street was laid out and established along the Potomac River between the

squares of ground and the Potomac River, and in the division none of the private owners obtained lots lying riverward of Water Street. Nevertheless some of the private owners claimed that they were entitled to riparian rights, but the Supreme Court in *Morris v. United States, supra*, held that they did not have riparian right because Water Street intervened between their property and the River.

In laying out the Federal City along the Anacostia River, no water street, by that name or otherwise, was established along the greater part of the waterfront. Water Street, where it does appear on the approved map, was not established riverward of privately owned property. Square 666 and other squares were laid out between Water Street and the river, and East and West streets crossed Water Street and extended along the North and South lines of Square 666 and other Squares. (Dermott Map).

Counsel refer to the Ellicott Engraved Plan of the City of Washington (1792) which they claim shows that Water Street abutted on the Anacostia River. The Ellicott Plan was never approved by the President. The evidence shows that it was not made from an actual survey. It was not made the basis for the sale of lots. The Plan was not adopted but the Dermott Map (1797) was approved by the President as the official map. The evidence shows that the Dermott Map was not made from a survey and it does not depict the original high water line. It does show, however, that Square 666 and other squares lie riverward of Water Street along the Anacostia River.

Counsel also refers to a tracing of the area involved which it is claimed depicts the original and the present mean high water lines of the river; the bulkhead line established by the War Department, and the mean water line of the channel of the River.

On cross examination, the witness who made the tracing, testified that he did not find any legends on any of the

maps or plats from which he prepared the tracing to show that one of the lines was the original high water line, but that he had added the words "original high water line" of his own initiative. (Page 40, Vol. 1 T.)

Counsel state that defendant relied upon the testimony of a geologist and certain ancient residents and the provisions in the Carrollsburgh Trusts. In addition to the geologist, the ancient residents and the provisions in the Carrollsburgh Trusts, the defendants relied upon the fact that in 1936, part of Square 666 was 15 feet above the mean high water line; the fact that Square 666 was laid out and still is riverward of Water Street; (Dermott Map); the testimony that there was more high ground in Square 666 in 1895 than there was in 1936; the presumption that the condition which existed in 1895 in the absence of proof to the contrary, has always existed; Section 2 of the Act of the General Assembly of Maryland, December 19, 1791 (D. C. code March 4, 1929, page 446), which provided that nothing therein contained should be so construed to vest in the United States any right of property in the soil as to affect the rights of individuals therein, otherwise than the same should be transferred by such individuals to the United States; and the provision in Section 1 of the Act of the General Assembly of Maryland, 1793,¹ that certificates granted, or which may be granted, by the said Commissioners, or any two of them, to purchasers of lots in the said City with acknowledgment of the payment of the whole purchase money, and interest, if any, should be sufficient and effectual to vest the legal estate in the purchasers, their heirs and assigns, according to the import of such certificates without any deed or formal conveyance.

¹ Laws of Maryland continued in force until 1880 Act of Congress approved July 16, 1790 D. C. Code March 4, 1929, Page 447.

Appellees also rely upon the fact that the burden of proof is upon the appellant.

The taxes which have accrued on the particular property involved in this suit during the pendency of the suit amount to more than \$10,000. The assessed value of the property during the pendency of the suit was \$61,832.00 and under the current tax rate of \$1.75 taxes amounted to \$1,082.06 per year. Although no exact statement of taxes paid was available, the total amount paid during the one hundred and fifty years of private ownership of this property is undoubtedly greatly in excess of its present value, and since the property is unimproved this expense has not been offset by income.

Congress has provided a very simple, speedy and inexpensive method of acquiring property in the District of Columbia by condemnation, which would result in an adjustment with the owners upon a fair and equitable basis as contrasted with the effort now being made to retake the property without return of taxes, recovery of which in an independent action, except for the last three year period, is barred by the statute of limitations.

The evidence adduced shows that the maps referred to by appellant indicating a street bounding on the Eastern Branch were made prior to an actual survey of the city along the Eastern Branch, and that when these surveys were completed and approved and official maps prepared and adopted as the official plan of the city, no such street was included. It was upon these later surveys and maps that conveyances were made of the lots in Square 666 in part in consideration for the surrender of lots in Carrollsburg which bounded on the water, and in part by purchase. The first President, George Washington, under whose authority the city was designed, after his retirement, became the purchaser of several lots similarly situated in a square immediately south of Square 666. His correspondence with the Commissioners is

in the record and establishes beyond question that both he and the Commissioners regarded the conveyance of these lots by the Commissioners as vesting in him a valid title.

We therefore submit that the appeal should not be allowed and that the accompanying motion to dismiss should be granted.

MILTON D. CAMPBELL,

WALTER M. BASTIAN,

Attorneys for Rigel O. Belt, et al.

CHARLES FAHY,

Solicitor General,

ALEX H. BELT, JR.,

Attorneys for the United States.

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF COLUMBIA

Equity No. 56,787

UNITED STATES OF AMERICA

v/s.

RIGEL O. BELT, ET AL.

MOTION TO DISMISS APPEAL.

Come now the appellees by Walter M. Bastian and Milton D. Campbell, their attorneys, and move the court to dismiss the appeal in the above entitled case upon the following grounds:

First. That no appeal will lie from the judgment of the District Court of the United States for the District of Columbia to the Supreme Court of the United States in the form of a direct appeal in view of the provisions of the Act of February 13, 1925, Section 1 (43 Stat. 938).

Second. That under the facts and law applicable thereto, no question exists which justifies the consideration of an appeal.

The bases of this motion are set forth in the accompanying statement of appellees objecting to the allowance of the appeal.

MILTON D. CAMPBELL,
WALTER M. BASTIAN,
Attorneys for Rigel O. Belt, et al.

APPELLEE'S
REPLY BRIEF

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APR 14 1943

SUPREME COURT OF THE UNITED

CHARLES ELMORE CHAPLEY
STATES CLERK

OCTOBER TERM, 1942

No. 919

THE UNITED STATES OF AMERICA,

Appellant,

vs.

RIGEL O. BELT, CLINTON ROBB, TRUSTEE, ARTHUR
D. CAMPBELL, TRUSTEE, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE DISTRICT OF COLUMBIA.

APPELLEE'S REPLY BRIEF.

MILTON D. CAMPBELL,
WALTER M. BASTIAN,
Counsel for Appellees.

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IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF COLUMBIA

Equity No. 56,787

THE UNITED STATES OF AMERICA

v.

RIGEL O. BELT, ET AL.

MEMORANDUM IN RE JURISDICTION ON APPEAL.

This memorandum relates only to the suggestion of counsel for the appellant in response to the motion to dismiss the appeal that in the event the motion is granted the case should be remanded to the trial court with instructions to vacate the judgment and for further proceedings in order to save the right of appeal to the losing party which has been lost by reason of the failure to take an appeal to the United States Court of Appeals for the District of Columbia within the time limitations fixed by the Federal Rules of Civil Procedure.

In support of this request counsel cite the case of *Phillips v. United States*, 312 U. S. 246, 61 S. Ct. 480, 85 L. Ed. 800.

A reference to the earlier cases in which the procedure followed in the *Phillips* case was established indicates in

our opinion that it is inapplicable to the situation now existing in the present case.

The cases referred to are as follows:

Gully, Collector, v. Interstate Natural Gas Co., 292 U. S. 16, 54 S. Ct. 565, 78 L. Ed. 1088;

Oklahoma Gas & Electric Co. v. Oklahoma Packing Co., 292 U. S. 386, 54 S. Ct. 732, 78 L. Ed. 1318;

Wall v. McMee, 296 U. S. 547, 56 S. Ct. 177, 80 L. Ed. 388;

International Ladies' G. W. U. v. Donnelly Garment Co., 304 U. S. 243, 58 S. Ct. 875, 82 L. Ed. 1316;

Wilentz v. Sovereign Camp, W. O. W., 306 U. S. 573, 57 S. Ct. 709, 83 L. Ed. 994;

Rorick v. Board of Commissioners, 307 U. S. 208, 59 S. Ct. 808, 83 L. Ed. 1242.

The exercise of appellate jurisdiction by the Supreme Court, in the absence of a right of appeal was expressly founded upon the error of the District Court in holding that the case was within Section 266 of the Judicial Code, hearing the case and entering its decree by three judge decision. The basis of this exercise of appellate jurisdiction to the limited extent of correcting the record and incidentally affording the losing party an opportunity for an appeal to the Circuit Court of Appeals is explained in the first of this series of cases as follows:

"As the case was not one within section 266, the merits cannot be brought to this court by a direct appeal. Compare *Smith v. Wilson*, 273 U. S. 388, 389, 391, 47 S. Ct. 385, 71 L. Ed. 699; *Healy v. Ratta*, 289 U. S. 701, 53 S. Ct. 522, 77 L. Ed. 1459. But, although the merits cannot be reviewed here in such a case, this Court by virtue of its appellate jurisdiction in cases of decrees purporting to be entered pursuant to section 266, necessarily has jurisdiction to determine whether the

court below has acted within the authority conferred by that section and to make such corrective order as may be appropriate to the enforcement of the limitations which that section imposes. The case is analogous to those in which this Court, finding that the court below *has acted without jurisdiction*, exercises its appellate jurisdiction to correct the improper action." (Emphasis supplied.)

In the present case the District Court heard the case and entered its decree without misadventure of procedure. Its record requires no correction. It could do no more than vacate its decree and forthwith reenter the same decree. The error is not of the court; it is not in the record; it is wholly an error of counsel in mistaking his remedy of appeal and permitting the time for appeal to lapse.

Section 58 of the Federal Rules of Civil Procedure supplemented by Section 10 and 32 of the Rules of the United States Court of Appeals for the District of Columbia limit the right of appeal to those cases in which a notice of appeal in the form and manner prescribed is filed with the clerk of the District Court within twenty days from the date of the judgment. This period had elapsed and 42 days had passed before plaintiff proceeded to initiate an appeal to this Court. If we are correct in our view that no right of appeal then existed, the judgment had then become a finality.

Hill, Admn. v. Hawes, U. S. Court of Appeals, D. C.,
Oct. 12, 1942, 75 App. D. C. W. L. R.

In this case the twenty days allowed for an appeal to the United States Court of Appeals for the District of Columbia from a judgment of the District Court of the United States for the District of Columbia had elapsed without the filing of a notice of appeal. Upon the entry of the judgment in the civil docket the clerk had negligently failed to notify the

losing party as required by Rule 77(d) of the Federal Rules of Civil Procedure. The District Court of its own motion in view of the error of its clerk vacated the judgment, re-entered it, and from this second judgment the appeal was taken.

The court held that the device of vacating the first judgment and the entry of the second to afford the plaintiff a right of appeal was ineffective, and if such a procedure could be adopted would make a dead-letter of the rule fixing a definite time for appeal.

Appellant in the present case is asking the Supreme Court to take the very action which the United States Court of Appeals for the District of Columbia has condemned.

As the opinion in *Hill Adm. v. Hawes, supra* has not been reported we are appending a printed copy of the opinion.

MILTON D. CAMPBELL,
WALTER M. BASTIAN,
Attorneys for Rigel O. Belt, et al.

APPENDIX.**UNITED STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA****No. 7844**

Filed Mar. 4, 1943. Charles K. Stewart, Clerk.

J. OLIVER HILL, Administrator of the Estate of Bertha Byrd,
Deceased, *Appellant,*

v.

FRANCIS L. HAWES, Individually, etc., et al.

Appeal from the District Court of the United States for the
District of Columbia

Decided October 12, 1942

*Mr. Henry Lincoln Johnson, for appellant.**Mr. John B. Gunion, with whom Miss Katherine N.
Hawes was on the brief, for appellees.*

Before Stephens, Vinson and Edgerton, Associate Justices.

STEPHENS, Associate Justice:

This case was brought here on appeal from a decree of the District Court of the United States for the District of Columbia dismissing a complaint of the plaintiff below, the appellant here. On June 4, 1941, the appellee filed in this court a motion to dismiss the appeal upon the ground, among others, that it was not noted within time. On November 13 following, we denied this motion without prejudice to the appellee's right to renew the same, upon the single ground mentioned, at the argument on the merits. The motion was so renewed and was argued at the time of the argument on the merits. We think the motion to dismiss must be granted.

After the hearing below on the complaint and an amended answer, proposed findings of fact and conclusions of law

were presented to the trial judge by each party on May 1, 1940. On May 7 the judge signed a judgment dismissing the complaint. This judgment was noted in the docket in compliance with Rule 79 (a) of the Federal Rules of Civil Procedure which requires the clerk of the District Court to keep a civil docket, and requires that all judgments shall be noted chronologically in the same and that the notation of a judgment shall show the date the notation is made. Rule 58 provides that the notation of a judgment in the civil docket as required by Rule 79 (a) constitutes the entry of the judgment and that the judgment is not effective before such entry. Rule 10 of the rules of this court in effect until January 31, 1941, provided:

No * * * judgment * * * of the District Court of the United States for the District of Columbia, or of any justice thereof, shall be reviewed by the Court of Appeals, unless the appeal shall be taken within 20 days after the * * * judgment * * * complained of shall have been made or pronounced. * * *

That twenty day period expired May 27, 1940. No notice of appeal was filed in the District Court during that period, although one was filed on June 3. At the time of the entry of the judgment of dismissal on May 7 the clerk apparently did not send out the notice required by Rule 77 (d) of the Federal Rules of Civil Procedure. That rule provides:

Immediately upon the entry of an order or judgment the clerk shall serve a notice of the entry by mail in the manner provided for in Rule 5 upon every party affected thereby who is not in default for failure to appear, and shall make a note in the docket of the mailing. Such mailing is sufficient notice for all purposes for which notice of the entry of an order is required by these rules; but any party may in addition serve a notice of such entry in the manner provided in Rule 5 for the service of papers.

No note in the docket of the mailing of such a notice appears in the record before us, and it is without dispute in the case that no such notice was sent out. On June 6, not-

withstanding the entry of the judgment of dismissal on May 7, the appellant filed a "Motion to Enter Judgment and Direct Clerk to Notify Parties." The motion stated as reasons that "the clerk of the court had failed to enter the day or month of the judgment of this court as is required by the rules of this court," and "that the clerk of this court has failed to notify the parties to this cause of the action of the court in this cause." This motion was not acted on until June 24, 1940, when the District Court denied it. But in the meantime, on June 13, the trial judge, apparently on his own motion, ordered the judgment of May 7 vacated "for the reason that the clerk failed under Rule 77 (d) of the Rules of Civil Procedure to serve a notice of the entry of judgment by mail on the plaintiff * * *" and to make a note in the docket of the mailing." On the same day, June 13, the trial judge signed and filed a second judgment in the same terms as the one of May 7. This judgment was noted in the docket. The appellant, treating this judgment of June 13 as the effective judgment in the case, filed a notice of appeal from it on June 14.

The question under the motion to dismiss its whether or not the appeal must have been taken within twenty days from the entry of the first judgment on May 7, or, putting it otherwise, was the trial judge warranted, because of the failure of the clerk to notify the parties of the entry of the judgment of May 7, in entering a second judgment, the one of June 13, and did the trial judge's action have the effect of extending the time for appeal, that is, of starting a second period of twenty days to run.

Three other rules of the Federal Rules of Civil Procedure are urged as pertinent: Rule 6 (b) by the appellee; Rules 60 (a) and 60 (b) by the appellant. Rule 6 (b) permits the trial court to enlarge time, but expressly states that "it may not enlarge * * * the period for taking an appeal as provided by law." Rule 60 (a) provides:

Clerical mistakes in judgments, orders, or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders.

Rule 60 (b) provides, so far as here pertinent:

On motion the court, upon such terms as are just, may relieve a party or his legal representative from a judgment, order, or proceeding taken against him through his mistake, inadvertence, surprise, or excusable neglect. * * *

We are cited to no authority and find none construing the rules above referred to in respect of the particular point with which we are here concerned. We must therefore decide the question according to our best judgment as to the meaning of the rules as written.

We think that while the requirement of Rule 77 (d) that the clerk immediately upon the entry of judgment shall serve a notice of the entry by mail upon the affected parties and make a note in the docket of the mailing of such notice should be complied with in every case, nevertheless the effectiveness of a judgment does not depend upon compliance with that requirement, but only upon notation in the civil docket as provided by Rules 58 and 79 (a); and we think that the failure of the clerk to comply with Rule 77 (d) did not warrant the District Court's setting the judgment aside. We think that the prohibition of Rule 6 (b) against the District Court's enlarging the period for the taking of an appeal as provided by law is absolute. We think that Rules 60 (a) and 60 (b) are inapplicable. The omission of the clerk to mail the notice of entry of judgment and to make a note in the docket of the mailing cannot correctly be described as a clerical mistake in the judgment itself within Rule 60 (a). So far as 60 (b) is concerned, there was no motion before the trial court to relieve *a party or his legal representative* from a judgment taken against him through *his* mistake, inadvertence, surprise or excusable neglect. The mistake involved in the omission to mail the notice of entry of judgment and to make a note in the docket of the mailing was that of the clerk. It is well settled that the rules of this court have the force of law. *Murphy v. Gould*, 39 App. D. C. 363 (1912), *certiorari denied*, 226 U. S. 613 (1913); *Talty v. District of Columbia*, 20 App. D. C. 489 (1902). Cf. also *Ex parte Dante*, 228 U. S. 429 (1913). In that case the same Rule 10

of our old rules as is involved in the instant case was the subject of the decision.

In *Credit Co. v. Ark. Central Railway*, 128 U. S. 258 (1888), a final decree dismissing a bill for want of equity was entered on January 22, 1883, by the United States Circuit Court for the Eastern District of Arkansas. At that time the period within which a writ of error might be brought or an appeal taken to the Supreme Court was two years after the entry of a judgment, decree or order. On January 22, 1885, exactly two years after the entry of the decree of dismissal, a petition for an appeal was presented to Mr. Justice Miller of the Supreme Court by the plaintiff and allowed, and at the same time that he allowed the appeal, he signed a citation to the defendants to appear in the Supreme Court to answer the appeal, and he also then approved a bond for costs presented to him. These papers were, however, not presented to the Circuit Court and filed with the clerk thereof until January 27, 1885. At that time under a ruling of the Supreme Court in *Brooks v. Norris*, 11 How. 204 (U. S. 1850),¹ it was the rule that it was the filing of the appeal papers in the inferior court which removed the record therefrom to the appellate court and that the period of limitation prescribed by the Act of Congress must be calculated accordingly. When the papers were presented to the Circuit Court on January 27 that court, apparently in an attempt to make the appeal effective notwithstanding the five day lapse, entered an order in the following terms:

Comes N. & J. Erb [attorneys for the plaintiff] and pray the court to enter an order granting to the plaintiff an appeal in this cause to the Supreme Court of the United States, which motion is denied, such appeal having heretofore been granted. It is ordered by the court that this entry bear date as of January 22, 1885. [128 U. S. at 259]

¹ This decision was adhered to in *Mussina v. Cavazos*, 6 Wall. 355 (U. S. 1867); *Scarborough v. Pargoud*, 108 U. S. 567 (1883); *Polleys v. Black River Co.*, 113 U. S. 81 (1885).

In short the Circuit Court attempted by a *nunc pro tunc* order to make it appear that the appeal had been perfected within the two year period. The Supreme Court, on its own motion, dismissed the appeal as late. In respect of the *nunc pro tunc* order, speaking through Mr. Justice Bradley, it said:

The attempt made, in this case, to anticipate the actual time of presenting and filing the appeal, by entering an order *nunc pro tunc*, does not help the case. When the time for taking an appeal has expired, it cannot be arrested or called back by a simple order of court. If it could be, the law which limits the time within which an appeal can be taken would be a dead letter. [128 U. S. at 261]

The device of attempted vacating of the first judgment and the filing and noting in the docket of another in the instant case we think equally ineffective. It, if recognized, would, like the *nunc pro tunc* order in *Credit Co. v. Ark. Central Railway*, make a dead letter of our rule fixing a definite time for appeal.

In accordance with the foregoing the motion to dismiss the appeal is granted, costs to be borne by the appellant.

Appeal dismissed.

(5759)

SUPREME COURT OF THE UNITED STATES.

No. 919.—OCTOBER TERM, 1942.

The United States of America,
Appellant,
vs.
Rigel O. Belt, Clinton Robb, Trustee,
Arthur B. Campbell, Trustee, et al. } Appeal from the District
Court of the United States
for the District of Columbia.

[June 7, 1943.]

Mr. Justice FRANKFURTER delivered the opinion of the Court.

This suit in the District Court for the District of Columbia was brought by the United States under the Act of April 27, 1912, c. 96, 37 Stat. 93, to establish and make clear its title to certain parcels of land adjacent to the Anacostia River. The District Court entered judgment for the defendant, and the United States seeks a direct appeal to this Court under § 5 of that Act, which provides: "That from the final decree of the Supreme Court of the District of Columbia . . . an appeal shall be allowed to the United States, and to any other party in the cause complaining of such decree, to the Supreme Court of the United States. . . ."

Section 238 of the Judicial Code, as amended by the Act of February 13, 1925, 43 Stat. 936, 938, 28 U. S. C. § 345, permits direct review by this Court of the judgments of the district courts in only five specified categories, "and not otherwise". The case at bar is within neither those categories nor that recognized by *Ex parte Kawato*, 317 U. S. 69, and *Ex parte Republic of Peru*, 318 U. S. —, *viz.*, the use of auxiliary writs in exceptional cases in aid of this Court's appellate jurisdiction. The Government seeks to remove this case from the restrictions of the Act of 1925 on the ground that it was not intended to affect such special instances of direct review as that afforded by the Act of April 27, 1912. But we cannot read such an exception into the 1925 Act.

Nor is the contrary result required because the District Court for the District of Columbia was known as the "Supreme Court of the District of Columbia" when the Act of 1925 became law.

At that time the Supreme Court of the District of Columbia possessed the jurisdiction of a district court of the United States, see Code of Law for the District of Columbia (1924) §§ 61, 62, 84, and it was treated as a "district court" for purposes of the Anti-Trust Acts, see *Fed. Trade Comm. v. Klesner*, 274 U. S. 145, 153-54, and *Swift & Co. v. United States*, 276 U. S. 311, 324-25. Considerations no less controlling exist for treating it as a "district court" within the scope of § 238. The dominating policy of the Act of 1925 was to restrict direct review to this Court as a matter of right, and more particularly to shut off such direct review of the judgments of federal *nisi prius* courts. It would be wholly inconsistent with that Act to exclude the District Court for the District of Columbia from the scope of its provisions merely because that court did not become a district court in name until the Act of June 25, 1936, c. 804, 49 Stat 1921. Cf. H. R. Rep. No. 1075, 68th Cong., 2d Sess., pp. 6-7.

We hold, therefore, that the provisions for direct review to this Court contained in § 5 of the Act of April 27, 1912, were repealed by § 13 of the Judiciary Act of 1925 because they were "inconsistent therewith". The judgment appealed from is vacated and the cause is remanded to the District Court so that it may enter a new judgment from which the United States may, if it wishes, perfect a timely appeal to the Court of Appeals for the District of Columbia. Cf. *Phillips v. United States*, 312 U. S. 246, 254.

So ordered.

Mr. Justice DOUGLAS and Mr. Justice MURPHY dissent.